

Corporate Recovery Group

Circuit Court Examinership Introduced

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Court Examinership protection extended to SMEs

SMEs in financial difficulty may now be able to apply directly to the Circuit Court for the appointment of an Examiner. This new provision forms part of the Companies (Miscellaneous Provisions) Act 2013 which was signed into law on 24 December 2013 and a ministerial order is awaited to commence its operation.

The new “Examinership-Lite” process is being introduced with the intention of reducing the cost of examinership for SMEs. Previously, examinership applications could only be commenced in the High Court, albeit that it was open to the High Court to remit examinerships with liabilities not exceeding €317,500 to the Circuit Court – a process which in itself involved further costs and was, therefore, seldom utilised.

Under the new provision, a qualifying “small company” may elect to apply directly to the Circuit Court for the appointment of an Examiner, subject to it satisfying two or more of the following criteria in the financial year prior to application:

1. Turnover does not exceed €8.8 million;
2. Balance Sheet total does not exceed €4.4 million;
3. Average number of employees does not exceed 50.

Such small companies may still also elect to apply directly to the High Court, which retains its jurisdiction to deal with smaller examinerships.

Although the intent behind the introduction of the new process – to open up examinership as an option for a greater number of distressed companies by reducing costs - is very positive, it is doubtful that a mere change of venue to the Circuit Court is sufficient to achieve that aim. It is likely that the degree of court involvement and requirement for specialist advisors will remain the same, at least in the short term. It is submitted, therefore, that a more fundamental revision of the examinership legislation may be required to achieve effective cost reductions.

For information in relation to the other changes introduced by the Companies (Miscellaneous Provisions) Act 2013 please see article by Emma Cafferky in [Corporate Publications](#) section.

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